



POLICE DEPARTMENT

October 12, 2011

MEMORANDUM FOR: Police Commissioner

RE: Detective Kim Andrews  
Tax Registry No. 896949  
Manhattan Court Section  
Disciplinary Case No. 2010-1841  
-----

The above-named member of the Department appeared before me on August 11, 2011, charged with the following:

1. Detective Kim Andrews, assigned to Queens Detective Area, on or about March 25, 2008, at 100 Church Street in New York County, testified falsely while under oath at a deposition.

N.Y.S. Penal Law Section 210.05 – PERJURY IN THE THIRD DEGREE

2. Detective Kim Andrews, assigned to Queens Detective Area, on or about and between June 2, 2004 and June 29, 2010, failed to submit a Change of Name, Residence or Social Condition form to her Commanding Officer upon marrying [REDACTED] (A.K.A. [REDACTED]), as required.

P.G. 203-18, Page 1, Paragraph 3 – EMERGENCY NOTIFICATION  
PROCEDURES/RESIDENCE  
REQUIREMENTS  
GENERAL REGULATIONS

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and the Respondent was represented by Rocco Avallone, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

COURTESY • PROFESSIONALISM • RESPECT

DECISION

The Respondent is found Not Guilty of Specification No 1 The Respondent is found Guilty of Specification No 2

SUMMARY OF EVIDENCE PRESENTEDIntroduction

It is not disputed that as a result of a civil lawsuit the Respondent filed in the United States District Court for the Eastern District of New York against the Department and the City of New York, the Respondent was deposed under oath at the Department of Law, 100 Church Street, Manhattan, on March 25, 2008. The parties stipulated that the transcript of this deposition be admitted into evidence [Department's Exhibit (DX) 1]

At this deposition, the Respondent stated that she had been married to [REDACTED] but that this marriage ended in divorce in 1992. When the Respondent was asked, "Was that your only marriage?" the Respondent answered, "Yeah."

The Department's Case

The Department called Lieutenant Steven Ettlinger as its sole witness

Lieutenant Ettlinger, assigned to Internal Affairs Bureau (IAB) Group 27, testified that in January, 2010, he was assigned to an investigation regarding the Respondent that had been opened by IAB in June, 2007, the United States Drug Enforcement Agency (USDEA)

On June 30, 2010, Ettlinger, Captain Ge and Detective Cappuccilli of IAB conducted a tape-recorded official Department interview of the Respondent. The Respondent was represented at this interview by a lawyer and by her union delegate (The transcript produced from the tape-recording of this official Department interview was admitted into evidence as DX 2 )

At this interview, when the Respondent was asked if she was married, she responded in the affirmative (DX 2, page 7). She stated that on June 2, 2004, a wedding ceremony was held on the island of Jamaica in the West Indies at which she was married to [REDACTED] (DX 2, pages 7-9 and 19-20). She was asked, "Did you notify the Department when you got married?" She stated that after her marriage, she "had sent my paperwork into DEA [Detectives Endowment Association]," but that she "didn't know there was some forms." When the Respondent began stating that, "I thought if I sent them into one place," she was interrupted by one of her interviewers who asked her, "Outside of the DEA, did you send it to the EMD [Employee Management Division]?" She answered, "I didn't know about the EMD." (DX 2, page 9)

Ettlinger testified that the Patrol Guide contains a rule that when a member of the service gets married, the member is required to submit a Change of Name, Residence or Social Condition form to the member's Commanding Officer or to the Employee Management Division (EMD) notifying the Department that the member's social status has changed because the member has married. Ettlinger testified that he reviewed the Respondent's personnel file and ascertained that between June 2, 2004, and June 29, 2010, she had not submitted a Change of Name, Residence or Social Condition form regarding her marriage to [REDACTED].

Ettlinger testified that he was not present at the deposition of the Respondent that was conducted on March 25, 2008, at 100 Church Street, Manhattan, but that he reviewed the transcript of this deposition

On cross-examination, Ettlinger confirmed that the IAB case file contained information about the lawsuit that the Respondent had filed against the Department but that no one from IAB had appeared at the deposition of the Respondent on March 25 2008. Ettlinger also confirmed that no disciplinary charges against the Respondent were ever recommended by IAB regarding USDEA's referral to IAB about a possible drug connection. When Ettlinger was asked if he knew of any other cases where Charges and Specifications had been brought against a member for failing to notify the Department about a marriage, Ettlinger answered that he could not recall any other case. Ettlinger agreed that at her official Department interview the Respondent answered all of the questions posed to her and that as far as he knew she did not try to mislead her interviewers. Ettlinger -

██████ had used at least five aliases. Ettlinger agreed that at her official Department interview the Respondent stated that she had become aware of some of the aliases that ██████ had used and that she did not know whether the name "██████" was his real name or an alias. Ettlinger was not sure whether at her official Department interview the Respondent had provided the name ██████ matrimonial attorney Joseph Ledwidge, but Ettlinger agreed that her attorney would have been someone he would like to have interviewed regarding the question of whether her marriage was valid.

The Respondent's Case

The Respondent called Joseph Ledwidge, Esq , as a witness and testified in her own behalf

Joseph Ledwidge, Esq

Ledwidge, an attorney who has an office in Queens, testified that he met the Respondent two or three years ago when she had a consultation with him about a matrimonial matter. She told him that she was concerned about whether a man she had married in the country of Jamaica had married her using his real name, whether he had previously been married, and whether or not he had divorced his previous wife. The Respondent had "great suspicion" as to whether their marriage was valid. Ledwidge recalled that he and the Respondent discussed that if her husband had married her using a false name the marriage probably was, at least, voidable. Ledwidge recalled that the - at that time, but that on March 2, 2011, she did retain him to pursue a divorce proceeding.

On cross-examination, Ledwidge recalled that he was interviewed by Department investigators at his office on August 4, 2011. When he was asked if he had told the investigators that during their initial consultation the Respondent had asked him hypothetical questions and general questions, he responded that some of her questions were general and that his answers to her questions "would have been general to cover the different scenarios that she could have been in at the time." He did not tell the Respondent that a marriage in Jamaica was not valid and he did not definitively tell her that her marriage to [REDACTED] was not valid.

On redirect examination, Ledwidge agreed that during the consultation the Respondent had not asked him questions about whether a marriage performed in Jamaica was proper but, rather, she had asked him questions about the validity of a marriage where the groom had used an alias or an assumed name, and that he would have certainly told her that if that scenario existed then the marriage probably was at least voidable

On re-cross-examination, Ledwidge stated that he did not recall telling the Respondent that her marriage was invalid based upon her husband's name

### The Respondent

The Respondent, a 20-year member of the service, testified that she has never previously been the subject of Charges and Specifications. The Respondent recalled that during 2004, a marriage ceremony was held in Jamaica where she married a man whose name she believed at that time was [REDACTED]. However, some time after the marriage ceremony, based on conversations she had with her husband's family members and friends and because "he had documents in different names," she learned that he had used different names. At the point in time that she learned this, she and her husband were not living together because he had been deported to Jamaica and was not able to join her in New York. The Respondent testified that through a friend she had joined a prepaid legal service that provided legal advice. She called this service during 2005 and inquired about the validity of a marriage where the groom "was man who was deported who had several different aliases." She was told "that if I was with someone who had falsified information and had used different names and aliases that in fact how do you know if your marriage is actually valid." The Respondent testified that after she received this

legal advice, she 'didn't act upon it because it  
has who knows how many aliases, my marriage is not valid "

The Respondent testified that after she divorced her first husband [REDACTED]  
"in the 90's," she filled out paperwork notifying the Department that she had divorced  
and was now single. Some time prior to her deposition on March 25, 2008, she  
consulted Ledwidge "because I had some questions once again in regards to how valid  
this marriage was." She told Ledwidge that [REDACTED] had been deported, that he had used  
numerous aliases and that she had seen that [REDACTED] had a New York State Driver  
License with the name "[REDACTED]" on it, and that family members had told her that  
[REDACTED] had a Jamaican passport under another name. Ledwidge told her that if he had  
used different names then their marriage may not be valid.

The Respondent testified that she filed a civil lawsuit in the United States District  
Court for the Eastern District of New York against a lieutenant who was her former  
commanding officer when she was assigned to the 105 Precinct Detective Squad. The  
Respondent testified that when she was deposed under oath at the Department of Law on  
March 25, 2008, she denied that she was presently married because she believed that her  
marriage to [REDACTED] was invalid because of the fact that he had used different aliases.  
After her deposition, she was never provided with a transcript of the deposition to review  
or sign.

The Respondent explained that at her official Department interview on June 30,  
2010, she told her interviewers that she was married to [REDACTED] because during the two  
year period between her deposition and her official Department interview she, had

learned additional information about [REDACTED] and obtained legal advice which convinced her that her marriage to [REDACTED] was in fact, valid

On cross-examination, the Respondent denied that the reason that she answered "Yeah" to the question, "Was that your only marriage?" at the deposition was because she did not want her questioner to learn about [REDACTED]'s criminal history. She was confronted with answers she gave to questions posed to her at her official Department interview on June 30, 2010. She agreed that she told her interviewers that she was married.

### FINDINGS AND ANALYSIS

#### Specification No. 1

The Respondent is charged with having committed the crime of Perjury in the Third Degree by testifying falsely while under oath at a deposition conducted on March 25, 2008, at 100 Church Street in New York County.

Because this charge does not delineate what the Respondent specifically said at the deposition that allegedly constituted false testimony, the Deputy Commissioner of Trials<sup>1</sup> directed the Assistant Department Advocate (the Advocate) to prepare a Bill of Particulars citing the questions that were posed to the Respondent at the deposition and the answers she provided that the Department asserts were false.

In the Department's Bill of Particulars, the Advocate listed two questions that were posed to the Respondent at the deposition: "Have you ever been married?" and "Was that your only marriage?" According to the Department's Bill of Particulars, the

---

<sup>1</sup> At a pretrial conference held on March 29, 2011.



Respondent falsely answered the first question by stating, “No,” and she falsely answered the second question by stating, “Yeah ”

However, at this trial, the Respondent’s counsel pointed out that the transcript of the deposition (DX 1) shows that when the Respondent was asked, “Have you ever been married?” she responded, “Yes ” The Advocate then conceded that the Respondent’s counsel was correct and that the allegation in the Bill of Particulars that the Respondent had answered, “No” to this question was inaccurate

As a result of this concession by the Department, the question of whether the Respondent is guilty of this charge hinges on whether the Department sufficiently proved that the Respondent’s answer of “Yeah” to the question, ‘ Was that your only marriage?’ constituted perjury<sup>2</sup>

The New York Court of Appeals has historically held that even where a statement made under oath has been shown to be factually inaccurate, the person who made the statement is not guilty of perjury if the person believed that the statement was true, as the result of a mistake or a misapprehension, because in such a situation the requisite intent to commit perjury is lacking<sup>3</sup> Thus, if a person makes a statement under oath that is factually inaccurate because she believed what someone else told her, the statement although false, is not willfully false and, therefore does not constitute perjury<sup>4</sup>

---

<sup>2</sup> The Advocate argued that the Respondent also committed perjury when she answered “No” to the question “Are you married?” However, this answer was not cited in the Department’s Bill of Particulars the purpose of which was to give the Respondent notice as to what she had specifically said at the deposition that the Department was alleging constituted false testimony

<sup>3</sup> See *People v ex rel Hegeman v Corrigan*, 195 N Y 1, *People v Dishler*, 38 Hun 175

<sup>4</sup> *People v Redmond*, 189 AD 96 (2<sup>nd</sup> Dept 1919)

Here, the Respondent testified that prior to her deposition on March 25, 2008, she genuinely believed that her marriage to [REDACTED] had never been a valid marriage because she had learned that he had used various names and aliases

The Respondent's claim that at the point in time when she was deposed she doubted that her marriage to [REDACTED] had ever been a valid marriage is supported by Ledwidge's testimony that during their consultation she had asked him about the validity of a marriage where the groom had used an alias or an assumed name and he had assured her that such a marriage was voidable. The fact that at her official Department interview the Respondent told her interviewers that she was married [REDACTED] does not serve to refute her claim that at the time she was deposed she genuinely believed that her marriage to [REDACTED] had not been valid. Her official Department interview was conducted well over two years after her deposition and the Department did not refute her claim that she had obtained additional factual and legal information during the interregnum which convinced her that her marriage to [REDACTED] was a valid marriage

With regard to the subject matter of deposition itself, the Department does not dispute that the Respondent's marital status was not a material issue at the deposition because it was a non-issue with regard to her lawsuit. The Department did not have to prove at this trial that the Respondent's marital status was a material issue at her deposition because materiality is not a requisite element of the crime of Perjury in the Third Degree.<sup>5</sup> However, the fact that the Respondent's marital status was a non-issue at her deposition is relevant to her mental focus at this deposition. At her deposition, the Respondent's concentration was on the matter at hand that she was being questioned in

---

<sup>5</sup> People v. Tyler, 62 AD2d 136 (2<sup>nd</sup> Dept 1978), affirmed 46 NY2d 251

detail about the facts that formed the basis for her lawsuit. Moreover, after the Respondent answered, 'Yeah' to the question, "Was that your only marriage?" her questioner not only did not challenge the accuracy of her answer, her questioner did not ask any specific follow-up questions at all.

Thus, this is not a situation where the Respondent spun a web of lies in response to a series of questions about her marriage to [REDACTED]. Rather, the perjury alleged here consists of a one-word answer to a single question which was not relevant to the purpose of this fairly lengthy deposition which resulted in a 103-page transcript (DX 1).

Based on the above, the Respondent is found Not Guilty of Specification No. 1.

#### Specification No. 2

It is charged that the Respondent, between June 2, 2004 and June 29, 2010, failed to submit a Change of Name, Residence or Social Condition form to her Commanding Officer upon marrying [REDACTED] A K A [REDACTED].

Lieutenant Ettlinger's testimony established that the Respondent never submitted a Change of Name, Residence or Social Condition form to her [REDACTED] Officer, or to the Department's Employee Management Division (EMD), as she was required to do after she married [REDACTED]. At her official Department interview, the Respondent stated that on June 2, 2004, a wedding ceremony was held on the island of Jamaica in the West Indies at which she was married to [REDACTED] (DX 2, pages 7-9 and 19-20) and it is clear that at that time she believed that their marriage was legal and valid. In her testimony at this trial, the Respondent acknowledged that she did not initiate any legal inquiry as to the validity of her marriage until 2005.

Because the Respondent had a previous marriage (to [REDACTED] which ended in divorce in 1992), she was, or should have been, well aware that was required to promptly submit a Change of Name, Residence or Social Condition form to her Commanding Officer as soon as practicable after she married [REDACTED]. At her official Department interview when she was asked, "Did you notify the Department when you got married?" She answered that shortly after her marriage she "had sent my paperwork into DEA" but that she "didn't know there was some forms." When the Respondent began stating that, "I thought if I sent them into one place," she was interrupted by one of her interviewers who asked her, "Outside of the DEA, did you send it to the EMD?" She answered, "I didn't know about the EMD" (DX 2, page 9).

Thus, based on the statements she made at her official Department interview, it is clear that at the time her marriage to [REDACTED] took place, she believed that her social condition had changed and that she was married.

The Respondent is found Guilty of Specification No. 2.

#### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on October 15, 1990. Information from her personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended that the Respondent forfeit 35 vacation days and that she be placed on dismissal probation for one year. However, the Department's penalty

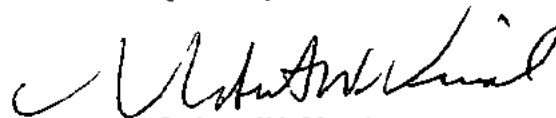
was predicated on the Advocate's position that the Respondent was also guilty of the crime of Perjury in the Third Degree

The Respondent has been found Guilty of having failed, from 2004 to 2010, to submit a Change of Name, Residence or Social Condition form to her Commanding Officer, or to EMD to alert the Department that she had married [REDACTED] It is important for a member to promptly comply with the requirement that she notify the Department that she has married because the Department has a right to know whether a member has married and the name of the person the member has married

Although the Respondent testified at this trial that sometime between her March 25, 2008 deposition and her June 30, 2010 official Department interview, she obtained information which convinced her that her 2004 marriage to [REDACTED] was valid, the Respondent continued to fail to comply with the requirement that she submit a Change of Name, Residence or Social Condition form to her Commanding Officer or EMD The Respondent's lengthy delay in complying with this requirement should be taken into consideration with regard to the penalty to be imposed on her for this misconduct

Having examined the facts and circumstances surrounding the Respondent's misconduct, and having considered the Respondent's performance record and her lack of a prior disciplinary record during her 20 years of service, I recommend that the Respondent forfeit 15 vacation days

Respectfully submitted,



Robert W Vinal

Assistant Deputy Commissioner - Trials


**APPROVED**  
NOV 15 2011  
  
RAYMOND W KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From Assistant Deputy Commissioner - Trials  
To Police Commissioner  
Subject CONFIDENTIAL MEMORANDUM  
DETECTIVE KIM ANDREWS  
TAX REGISTRY NO 896949  
DISCIPLINARY CASE NO 2010-1841

The Respondent received an overall rating of 4.0 on her 2010-2011 evaluation, 5.0 on her 2009-2010 evaluation, and 4.5 on her 2008-2009 evaluation. She has been awarded one Meritorious Police Duty medal and two Excellent Police Duty medals. [REDACTED] She does not have monitoring records. She has no prior formal disciplinary record.

For your consideration



Robert W. Vinal  
Assistant Deputy Commissioner - Trials